

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

VERDENE PAGE,)	
)	IC 02-007246
v.)	
)	
McCAIN FOODS, INC.,)	ORDER REGARDING
)	CLAIMANT'S SECOND
)	MOTION FOR RECONSIDERATION
Employer,)	
and)	
)	
TRANSCONTINENTAL)	Filed November 23, 2005
INSURANCE COMPANY,)	
)	
Surety,)	
Defendants.)	
)	

The above-entitled matter is pending before the Idaho Industrial Commission on Claimant's Second Motion for Reconsideration filed on September 29, 2005. Defendants did not file a response.

In the second motion for reconsideration, Claimant petitions the Commission to consider the merits of Claimant's original motion for reconsideration and to further address Claimant's motion for additional findings. Claimant contends that her motion for reconsideration was not untimely because there is no requirement that a motion for reconsideration be made, received, and filed by the Commission within 20 days of the filing date of the decision. Additionally, Claimant requests the Commission to address the motion for additional findings more fully.

The Commission denied Claimant's original motion for reconsideration because it was

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untimely. The Commission filed its Findings, Conclusions, and Order on Remand on June 14, 2005.

Claimant's original motion for reconsideration was dated July 5, 2003 and file stamped on July 7, 2005. Claimant's motion was neither made nor filed within 20 days after the filing date of the Commission's decision. Idaho Code, § 72-718. The Commission has reconsidered Claimant's first motion to reconsider and reaffirms that the motion was untimely. There is no procedure at the Commission for yet another reconsideration of a prior reconsideration. Claimant's request to reconsider the denial of the original motion for reconsideration is DENIED.

The second matter in Claimant's second motion for reconsideration is a request to review the motion for additional findings. Claimant states that her motion for additional findings applied to sections I through IV of her argument, not merely the issue of attorney fees, as addressed by the Commission's order. Simply stated, each section of the Claimant's memorandum applied equally and without differentiation to the motion for reconsideration as well as the motion for additional findings.

Claimant's motion for additional findings was not a separate document from the motion to reconsider and motion to reopen, nor was it given any distinction in the form of a heading or statement in the memorandum accompanying the motions. The Commission reviewed the motions and memorandum, and issued an order addressing the issues as they appeared to be presented. There was not a discussion of the Commission's review of Claimant's motion for additional findings pertaining to sections I, II, and III of Claimant's memorandum. Because of this confusion, the Commission will grant Claimant's motion to reconsider the order denying the motion for additional findings on issues I, II, and III as presented in the memorandum filed July 7, 2005.

First, Claimant argues that the Commission's finding, that Claimant is entitled to temporary

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total disability benefits only from August 18 through November 26, 2001, is in error and unsupported by the record. Claimant's second argument is that the termination of Claimant's medical benefits effective November 26, 2001 is not supported by the record. The third argument Claimant presents is that the Commission's finding that Claimant suffers a five percent permanent partial disability, including her one percent PPI, is not adequate and is not supported by the record.

The Commission appreciates that this is a factually contested matter and that there is conflicting evidence. But merely pointing out the conflicts in the record does not lead to the conclusion that additional findings are required, or that the Commission's decision is not supported by substantial evidence.

The record shows that Dr. Petersen opined Claimant medically stable on November 26, 2001, which is the day Claimant failed to appear at her scheduled appointment with Dr. Petersen. The date medical benefits were terminated was a finding made from a review of all the medical evidence presented, as well as Dr. Petersen's opinion, not merely that Claimant did not appear for her post-surgical examination. Though Claimant may not agree, the Commission gave greater weight and credibility to the evidence presented by Dr. Petersen.

Regarding Claimant's entitlement to additional medical benefits, even Dr. Hicks testified that Claimant's arthritis is clearly not work-related. Claimant argues that Dr. Hicks testified her knee injury was the straw that broke the camel's back and that Claimant's other medical conditions are compensable. Yet, beyond the evidence presented by Dr. Hicks, the record is replete with equivocal medical records displaying the unclear nature of Claimant's condition and, as stated before, the Commission gave greater weight and credibility to the evidence presented by Dr. Petersen. The Commission is not required to discredit each fact which it does not support. The decision of the

Commission sets forth its findings of fact and draws conclusions from those findings.

Additionally, the Commission's finding that Claimant suffers a five percent permanent partial disability, including her one percent PPI, is adequate and substantially supported by the record. Claimant did not prove that she suffers more than five percent permanent partial disability and Claimant did not prove she fits within the odd-lot doctrine. Claimant has not attempted other types of employment. She has not searched for other work and found it unavailable, nor has Claimant proven that any efforts to find suitable employment would be futile. Claimant has not attempted to perform sedentary positions which evidence suggests she may be capable of holding.

The Commission's finding that Claimant suffers a five percent permanent partial disability, including her one percent PPI is supported by the decision and needs no additional findings of fact. The decision specifically takes into account Claimant's age, training, education, work experience, her pre-existing conditions, her current limitations and restrictions, the opinion of the doctors, as well as additional medical and non-medical factors. The Commission then took those facts and concluded Claimant suffers a five percent permanent partial disability, including her one percent PPI.

A review of the record indicates that there was substantial competent evidence to support the Commission's decision, despite the fact that there was conflicting evidence. Further, the Commission's decision sets forth ample findings of fact to support its decision. There is no need to supplement the Commission's order with additional findings.

As it regards the motion for additional findings, the Commission GRANTS Claimant's second motion for reconsideration. Yet as the analysis above concludes, the Commission DENIES the motion for additional findings.

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Conclusion

Based upon the foregoing reasons, Claimant's second motion for reconsideration is DENIED in part, GRANTED in part, and after a second review, Claimant's motion for additional findings is DENIED.

IT IS SO ORDERED.

DATED this _23 day of November, 2005.

INDUSTRIAL COMMISSION

_____/s/_____
Thomas E. Limbaugh, Chairman

James F. Kile, Commissioner

_____/s/_____
R. D. Maynard, Commissioner

ATTEST:

_____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on _23___ day of November, 2005, a true and correct copy of the foregoing ORDER REGARDING CLAIMANT'S SECOND MOTION FOR RECONSIDERATION was served by regular United States Mail upon each of the following:

L.CLYEL BERRY
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____/s/_____